Identifying the Father

CHAPTER 3

In this chapter . . .

One of the most important steps in the adoption process is identifying the father of the child or determining that he cannot be identified. The father may be a biological father, legal father, putative father, or equitable father. It is important to establish early in the proceedings the type of father because the

type of father dictates which procedures the court must follow in order to proceed with an adoption. Section 3.1 defines the different types of fathers. If a legal father is determined, he has the rights to care, custody, control, and earnings of the child. A legal father's parental rights may only be terminated pursuant to either a child protective proceeding or a step-parent adoption. When no legal father has been established, and the court is dealing with a putative father, the court may also terminate his parental rights pursuant to a child protective proceeding or a step-parent adoption. However, the court may also terminate his rights pursuant to the Adoption Code. See Sections 2.11–2.15 for information on termination of parental rights.

This chapter discusses the procedures that may be utilized to establish paternity under the Adoption Code and related court rules, the Acknowledgment of Parentage Act, the Paternity Act, the Uniform Interstate Family Support Act, and the court rules governing child protective proceedings. The procedures for identification and notification of a legal father are specifically set forth. However, this chapter does not discuss child support, confinement expenses, or attorney fees in relation to establishing a legal father.

Please note that the *only* ways to establish or identify the father pursuant to the Adoption Code are found in Sections 3.4, 3.5, and 3.6. The other means of identifying or establishing a father that are provided in this chapter generally occur *prior* to the filing of an adoption petition. The information is provided as a basic framework to assist the court in identifying the legal father. The information may also be helpful to a court when a father comes forward during or prior to an adoption proceeding and attempts to establish himself as the legal father of the adoptee.

Attached as Appendix C is the *Absent Parent Protocol: Finding and Notifying Non-custodial Parents in Child Protective Cases* that was developed by the State Court Administrative Office. This protocol is a useful tool for guiding the court through the procedures for finding and notifying a noncustodial parent during a child protective proceeding.

3.1 "Father" Defined

The type of father should be identified to ensure that adoptions are valid and permanent arrangements. As indicated previously, the procedures for termination of the parental rights of a putative father are very different from the procedures followed for termination of a legal father's parental rights. This section contains key definitions of the different types of fathers found in the law.

This section does not contain the procedures for identifying or establishing a legal father. Those procedures, which are governed by the Acknowledgment of Parentage Act, MCL 722.1001 et seq., the Paternity Act, MCL 722.711 et seq., the Adoption Code, MCL 710.21 et seq., MCR 3.921(C), a court rule

governing child protective proceedings, the Uniform Interstate Family Support Act, MCL 552.1101 et seq., and case law, are discussed in Sections 3.4 through 3.11.

A. Biological Father

A biological father is the natural father of a child, regardless of whether or not the child was an issue of a marriage or "born out of wedlock." DNA genetic tissue* testing may be conducted to determine a child's biological father.

*See Section 3.8(I) for more information regarding genetic testing.

It is important to note that the biological father is not always the legal father. If a child's mother is married but conceives a child with someone other than her husband, then her husband is presumed to be the legal father, unless a court determines otherwise.

B. Legal Father

A legal father is a man whom the law has presumed to be the father of a child or a man whom a court has determined to be the father of a child.

If the parties are married at the time of conception or birth, then the child is presumed to be an issue of the marriage, with the husband being the legal father to the child. *Serafin v Serafin*, 401 Mich 629, 636 (1977). This presumption is rebuttable by clear and convincing evidence. 401 Mich at 636 and *Maxwell v Maxwell*, 15 Mich App 607, 617 (1969). This presumption may be rebutted in a divorce proceeding or during child protective proceedings. *Opland v Kiesgan,* 234 Mich App 352, 359 (1999) and *Afshar v Zamarron*, 209 Mich App 86, 92 (1995).

If the parties have not taken any steps to formally rebut this presumption, then at the time of adoption hearings the man married to the mother at the time of conception or birth is the legal father of the child.

C. Putative Father

A putative father is any of the following:

- a man who claims to be the father of a child "born out of wedlock;"
- a man whom the mother claims is the father of a child "born out of wedlock;" or
- a father of a child who although born or conceived during a marriage is not an issue of that marriage.

See State Court Administrative Office, *Absent Parent Protocol: Finding and Notifying Non-custodial Parents in Child Protective Cases*, p 6 (attached as Appendix C).

D. Equitable Father

An equitable father is a man whom a court has granted the status of a father although that person is not the child's biological or legal father. The test for determining whether or not a person is an equitable father was set forth in *Atkinson v Atkinson*, 160 Mich App 601 (1987) and reiterated in *York v Morofsky*, 225 Mich App 333 (1997). In order to be determined an equitable father, a man must establish the following:

1) that he is married to the child's mother but is not the biological parent of a child born or conceived during the marriage;

2) that he and the child mutually acknowledge a relationship as father and child, *or* that the child's mother has cooperated in the development of a father-child relationship over a period of time prior to filing for divorce;

3) that he desires to have the rights afforded to a parent; and

4) that he is willing to take on the responsibility of paying child support. 225 Mich App at 336.

Only a man married to the child's mother may be determined to be an equitable parent. The Michigan Court of Appeals has declined to extend the doctrine to unmarried persons. *Van v Zahorik*, 460 Mich 320, 331-34 (1999).

Once a court recognizes a man as an equitable father, that status is a permanent status and he possesses all of the rights and responsibilities of a parent. *York v Morofsky*, 225 Mich App 333, 337 (1997).

3.2 Due Process and Equal Protection for Fathers

Fathers have challenged the laws relating to a father's rights, including rights affected by the adoption process. Adoption laws have consistently been challenged as a denial of both due process and equal protection.

The following are case summaries outlining the most significant due process and equal protection cases as they relate to fathers:

- ***Stanley v Illinois*, 405 US 645 (1972)**

Joan and Peter Stanley were the parents to three children. They lived together intermittently for 18 years but never married. When Joan Stanley died the state of Illinois removed the three children from Peter Stanley's (Stanley) care without a hearing. Illinois law provided that the children of unwed fathers would become wards of the State upon their mother's death. The law presumed that unwed fathers were unfit parents. Illinois law contained no such presumption for unwed mothers. Stanley appealed the court's decision

to remove the children and place them with guardians. Stanley claimed that his due process rights were violated because he was entitled to a hearing on his fitness as a parent before his children were removed from his care. Stanley also claimed that he was denied equal protection of the law because all parents, except unwed fathers, are afforded a hearing before the custody of their children can be challenged.

The United States Supreme Court held:

> "We conclude that, as a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment." 405 US at 649.

The Court indicated that the integrity of the family unit has found protection in the Due Process Clause of the 14th Amendment, the Equal Protection Clause of the 14th Amendment, and the Ninth Amendment in cases such as *Meyer v Nebraska*, 262 US 390 (1923), *Skinner v Oklahoma*, 316 US 535 (1942), and *Griswold v Connecticut*, 381 US 479 (1965). 405 US at 651. The Court found that the state of Illinois was barred, as a matter of both due process and equal protection, from taking custody of the children of an unwed father, absent a hearing and a particularized finding that the father was an unfit parent. The court recognized a father's "cognizable and substantial" interest in the "companionship, care, custody, and management" of his children. 405 US at 651-52. The court also recognized the State's interest in caring for children, but indicated that that interest is "*de minimis*" if the father is a fit parent. 405 US at 657-58. Accordingly, the Court reversed the lower court's decision and remanded for further proceedings.

- ***Quilloin v Walcott*, 434 US 246 (1978)**

In *Quilloin*, the United States Supreme Court reviewed the constitutionality of a Georgia law that as applied denied an unwed father the authority to prevent the adoption of his illegitimate child. Ardel Walcott (Ardel) and Leon Quilloin (Quilloin) had a child together. The parties were never married and never resided together. Three years after the child's birth, Ardel married Walcott. Ardel and Walcott filed a petition for step-parent adoption.* Quilloin filed a petition to block the adoption and secure visitation rights. The lower court held hearings on the matter and determined that although the child had never been abandoned or deprived, Quilloin had only provided irregular support. The lower court also concluded that Quilloin's visitations with the child were having a "disruptive" effect on the child and it was in the child's best interests to allow the adoption. The court indicated that in the first 11 years of the child's life Quilloin had not taken the necessary steps to legitimize the child, and it wasn't until after the filing of the adoption petition that Quilloin filed a petition to legitimize the child. As such, the lower court determined that Quilloin had no standing to intervene in the adoption petition.

*See Section 8.3 for more information regarding step-parent adoptions.

The lower court found Walcott was a fit and proper person and allowed the step-parent adoption. 434 US at 247-51.

Quilloin appealed on the grounds that the Georgia law as applied violated his rights to due process and equal protection. Quilloin claimed that under Georgia law he was not entitled to the same power to veto an adoption as married or divorced parents and unwed mothers. Quilloin claimed that absent a finding of his unfitness as a parent, he is entitled to an absolute veto over adoption of his child. 434 US at 253.

The United States Supreme Court held that Quilloin was not deprived of due process or equal protection. The Court stated:

> "We have little doubt that the Due Process Clause would be offended '[if] a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.' *Smith v Organization of Foster Families,* 431 U.S. 816, 862-863 (1977) (STEWART, J., concurring in judgment). But this is not a case in which the unwed father at any time had, or sought, actual or legal custody of his child. Nor is this a case in which the proposed adoption would place the child with a new set of parents with whom the child had never before lived. Rather, the result of the adoption in this case is to give full recognition to a family unit already in existence, a result desired by all concerned, except appellant. Whatever might be required in other situations, we cannot say that the State was required in this situation to find anything more than that the adoption, and denial of legitimation, were in the 'best interests of the child.'" 434 US at 255.

The Supreme Court also rejected Quilloin's claim that equal protection required the law to treat him the same as a separated or divorced father. The Court concluded that Quilloin's interests are readily distinguishable from those of a separated or divorced father. Quilloin had never exercised any actual or legal custody over the child and had never "shouldered any significant responsibility with respect to the daily supervision, education, protection, or care of the child." 434 US at 256. Accordingly, the state did not violate equal protection by recognizing this fact. 434 US at 256. The Court upheld the denial of the legitimation and the granting of the adoption.

The Supreme Court did not review the question of whether or not the Georgia statute was unconstitutional because it distinguished unwed parents according to their gender. The Court reserved that question, which was later answered in *Caban v Mohammed*, 441 US 380 (1979). 434 US at 253 n13.

- ***Caban v Mohammed*, 441 US 380 (1979)**

Abdiel Caban (Caban) and Maria Mohammed (Mohammed) lived together for five years. During that time, although not married, they held themselves out as a married couple and had two children together. They separated after the birth of both children. Mohammed had custody of both children but Caban continued to support and visit with the children. Eventually, Mohammed married another man, and she and her new husband filed a petition for step-parent adoption. At the time the petition was filed, the children were three and six years old. Caban also married and filed a cross-petition for step-parent adoption. At that time, the New York law governing adoptions provided that a mother must consent* to the adoption of her child "born out of wedlock." However, a father's consent to adoption of his child "born out of wedlock" was not necessary. 441 US at 382-87. After a hearing where both parties presented evidence, the trial court granted Mohammed's petition for adoption, thereby cutting off all of Caban's parental rights. The trial court indicated that Caban's adoption petition could not be granted unless Mohammed consented to the adoption. Caban appealed claiming the distinction under New York law between the rights of an unwed father and those of other parents violated equal protection. Caban also claimed that the Court in *Quilloin v Walcott*, 434 US 246 (1978), recognized the due process right of natural fathers to maintain a parental relationship with their children absent a finding they are unfit as parents.

*See Section 2.6 for more information regarding consent to adoption.

The United States Supreme Court indicated that the application of the law in New York provided a "distinctive difference between the rights of Abdiel Caban, as the unwed father of David and Denise, and Maria Mohammed, as the unwed mother of the children: Adoption by [Caban] was held to be impermissible in the absence of [Mohammed's] consent, whereas adoption by [Mohammed] could be prevented by [Caban] only if he could show that the Mohammeds' adoption of the children would not be in the children's best interests. Accordingly, it is clear that §111 treats unmarried parents differently according to their sex." 441 US at 387-88.

The United States Supreme Court indicated that gender-based distinctions "must serve important governmental objectives and must be substantially related to achievement of those objectives." 441 US at 388, quoting *Craig v Boren*, 429 US 190, 197 (1976). The Court recognized New York's important governmental objective in providing adoptive homes for illegitimate children. However, the Court indicated that the distinction in New York law between unmarried mothers and unmarried fathers did not bear a substantial relationship to the State's interest. 441 US at 391. The Court indicated:

> "When the adoption of an older child is sought, the State's interest in proceeding with adoption cases can be protected by means that do not draw such an inflexible gender-based distinction as that made in §111. In those cases where the father never has come forward to participate in the rearing of his child, nothing in the Equal Protection Clause precludes the State from withholding

> from him the privilege of vetoing the adoption of that child. . . . [I]n cases such as this, where the father has established a substantial relationship with the child and has admitted his paternity, a State should have no difficulty in identifying the father even of children born out of wedlock. Thus, no showing has been made that the different treatment afforded unmarried fathers and unmarried mothers under § 111 bears a substantial relationship to the proclaimed interest of the State in promoting the adoption of illegitimate children." 441 US at 392-93. (Citation omitted.)

The Supreme Court limited the scope of its ruling. The Court indicated in footnote 11 that the Court did not review whether the statute could be applied to newborn adoptions considering the difficulties in locating and identifying unwed fathers at birth. 441 US at 393. The Court reversed the finding of the lower court that granted the adoption. The Court also indicated that it would not address the due process claim because the statute was found unconstitutional under the Equal Protection Clause. 441 US at 394.

- ***Lehr v Robertson*, 463 US 248 (1983)**

In the *Lehr* case, Lorranie Robertson (Robertson) and Jonathan Lehr (Lehr) had a child "born out of wedlock." Eight months after the child's birth, Robertson married Richard Robertson. When the child was over two years old, the Robertsons filed a petition for step-parent adoption. On March 7, 1979, the court entered an order of adoption. Lehr appealed the entry of that order, claiming that he was entitled to notice of the adoption proceeding.

*See Section 3.5 for Michigan's version of the "putative father registry."

The state of New York maintains a "putative father registry"* that allows a man who wishes to claim paternity of a child "born out of wedlock" to register and be entitled to notice of any proceedings for the child's adoption. 463 US at 250-51. Although Lehr claimed to be the child's father, he failed to register. The New York law required notice of adoption proceedings to be given to registered fathers and several other classes of fathers of children "born out of wedlock." However, Lehr admitted that he did not register or fall under any of the other classes of fathers entitled to notice under the law. Lehr claimed that because he filed a "visitation and paternity petition" in a different county, one month after the adoption proceedings were commenced, he was entitled to notice and a hearing. 463 US at 252. Lehr also claimed that the gender-based classification in the statute, which denied him the right to consent to the child's adoption and accorded him fewer procedural rights than her mother, violated the Equal Protection Clause. 463 US at 255.

The United States Supreme Court distinguished between an unwed father who has established a relationship with a child and one who has not established a relationship. The Court indicated:

> "The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the

> child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. If he fails to do so, the Federal Constitution will not automatically compel a State to listen to his opinion of where the child's best interests lie." 463 US at 262.

The United States Supreme Court indicated that the state has a legitimate interest in facilitating the adoption of young children in an expeditious manner. The Court found the father's argument merely an attack on the notice provisions of the statute. The Court indicated that the Constitution does not require a trial judge to give special notice to a nonparty who is presumptively capable of asserting his or her own rights. 463 US at 265.

The Court also indicated that the father's argument that the statute violates the Equal Protection Clause must fail. In finding so the Court indicated:

> "If one parent has an established custodial relationship with the child and the other parent has either abandoned or never established a relationship, the Equal Protection Clause does not prevent a State from according the two parents different legal rights." 463 US at 267-68.

Lehr had never taken care of the child or established any relationship with the child. The Supreme Court affirmed the decision of the lower court that approved the adoption of the child. 463 US at 268.

- ***Michael H v Gerald D*, 491 US 110 (1989)**

Michael is the biological father of Victoria; however, he was not her legal father. Victoria was conceived and born while her mother was married to Gerald. After Victoria's birth, she lived with her mother and Gerald. Eventually, Victoria's mother took Victoria and moved in with Michael. A short time later, Victoria's mother decided to return to Gerald, and she and Victoria moved back in with Gerald. Both Michael and Gerald established relationships with Victoria. Eventually, Victoria's mother remained with Gerald and had two additional children. Michael filed a petition with the court seeking an order of filiation declaring Victoria to be his daughter, and a visitation order. Gerald intervened in the action and filed a motion for summary judgment claiming that there were no triable issues of fact as to Victoria's paternity because she was conceived and born in wedlock. The trial court granted Gerald summary judgment and indicated that the presumption contained in California law which provides that a child born during a marriage is a child of the marriage may only be rebutted by the husband or wife. 491 US at 113-15. Michael appealed, claiming his due process rights were violated.

The United States Supreme Court found that Michael's due process rights were not violated. The Court indicated:

> "Michael reads the landmark case of *Stanley v Illinois*, 405 U.S. 645 (1972), and the subsequent cases of *Quilloin v Walcott*, 434 U.S. 246 (1978), *Caban v Mohammed*, 441 U.S. 380 (1979), and *Lehr v Robertson*, 463 U.S. 248 (1983), as establishing that a liberty interest is created by biological fatherhood plus an established parental relationship -- factors that exist in the present case as well. We think that distorts the rationale of those cases. As we view them, they rest not upon such isolated factors but upon the historic respect -- indeed, sanctity would not be too strong a term -- traditionally accorded to the relationships that develop within the unitary family." 491 US at 123.

In finding such, the United States Supreme Court indicated that traditions have protected the marital family, precisely what Michael was proposing to undermine. Accordingly, the Court stated that there is no constitutionally protected right to legal parentage on the part of an adulterous natural father, and the decision of the lower court was affirmed. However, the Court pointed out that the holding was narrow and limited by the facts of the case. The Court stated, "We limit our pronouncement to the relevant facts of this case because it is at least possible that our traditions lead to a different conclusion with regard to adulterous fathering of a child whom the marital parents do not wish to raise as their own." 491 US at 129 n7.

- ***In re Kozak*, 92 Mich App 579 (1979)**

*See Section 2.12 for more information regarding the termination of parental rights pursuant to the Adoption Code.

A putative father's parental rights to his son were terminated pursuant to MCL 710.39 of the Adoption Code.* The child's mother filed both a release of parental rights and a petition to terminate the parental rights of an unknown putative father so that the child could be placed for adoption. The mother claimed that she did not know the identity of the child's father. After a hearing, the court terminated her parental rights to the child as well as the parental rights of the unknown putative father. Approximately three months after the order of termination was entered, the father filed an acknowledgment of paternity and then filed for a hearing on custody and a stay of the adoption proceedings. The court denied the request for a hearing and indicated that the order terminating parental rights was *res judicata*. The Court of Appeals overturned the decision to deny a hearing and indicated that to be *res judicata* the former adjudication must be between the same parties. Since the father was not a party to the original hearing, he was not barred from litigating the issue of termination of parental rights. The Court of Appeals provided:

> "The family relationship occupies a basic position in our society's hierarchy of values, and is of great importance. The fundamental nature of parental rights is a liberty protected by the due process clause of the Fourteenth Amendment. *Reist v Bay Circuit Judge*, 396 Mich 326; 241 NW2d 55 (1976). The due process requirements when a legal adjustment of this constitutionally protected relationship is made have been codified in the Michigan

Adoption Code. The rights to notice and a hearing are among those extended to a putative father." 92 Mich App at 581-82.

The Court of Appeals then remanded the case for a hearing pursuant to MCL 710.39. 92 Mich App at 584.

- ***In re Baby Boy Barlow*, 404 Mich 216 (1978)**

The mother gave birth to a child "out of wedlock" and placed the child with an adoption agency for an eventual adoption. The father was notified of the proceedings and came forward admitting paternity and seeking custody of the child. The trial court terminated the father's parental rights to the child pursuant to MCL 710.39(1) after finding that it would not be in the best interests of the child* to award custody to the father. The court also found that the father could not properly care for the child, no emotional ties had developed between the child and his father, the father was not inclined to raise the child in the mother's religion, and it would be in the best interests of the child to be adopted by the foster parents. 404 Mich at 225-26.

*The "best interest" factors as provided in the Adoption Code can be found in Section 1.4.

The Michigan Supreme Court reversed the lower court's finding that termination was in the best interests of the child and provided the following:

- When determining if an award of custody to the putative father is in the best interests of the child, the court *may* look to MCL 722.23, of the Child Custody Act, for a list of the factors to be considered. 404 Mich at 236. The Child Custody Act applies to circuit court custody disputes, and although it is not controlling, it may be of some guidance. 404 Mich at 235.*

*Since the Court's holding in *Barlow*, the Adoption Code has been amended to include "best interest" factors. See Section 1.4.

- Terminating the rights of a father in favor of an unknown, unidentified, hypothetical third party should not be done in the absence of evidence indicating that the father's home would not be a good one for the child. 404 Mich at 233.
- The religious preference of a child's mother is not a controlling factor in determining whether to terminate the father's rights. 404 Mich at 239.
- The noncustodial parent must be given notice and an opportunity to be heard. 404 Mich at 229.

3.3 Establishing a Father When a Child is "Born Out of Wedlock"

The Paternity Act, MCL 722.711 et seq., and the Adoption Code, MCL 710.21 et seq., each provide a definition of "born out of wedlock."

*See Section 3.8 for more information regarding the Paternity Act.

The Paternity Act* defines a "child born out of wedlock" as "a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage." MCL 722.711(a).

*See Section 3.4 for more information regarding the establishment of paternity pursuant to the Adoption Code.

The term "born out of wedlock" is also defined under the Adoption Code,* with similar language. The Adoption Code defines a child "born out of wedlock" as "a child conceived and born to a woman who was not married from the conception to the date of birth of the child, or a child whom the court has determined to be a child born during a marriage but not the issue of that marriage." MCL 710.22(g).

*See Section 3.7 for more information regarding the establishment of paternity pursuant to the Acknowledgment of Parentage Act.

The Acknowledgment of Parentage Act,* MCL 722.1001 et seq., does not define a child "born out of wedlock." However, the definition of "child" is similar to the definitions provided in the Paternity Act and the Adoption Code for a child "born out of wedlock." The Acknowledgment of Parentage Act defines a "child" as "a child conceived and born to a woman who was not married at the time of conception or the date of birth of the child, or a child that the circuit court determines was born or conceived during a marriage but is not the issue of that marriage." MCL 722.1002(a). This definition differs slightly from the definitions provided by the Paternity Act and the Adoption Code. The Paternity Act and the Adoption Code indicate that the mother was not married from the time of conception *to* the date of birth. However, the Acknowledgment of Parentage Act indicates the mother was not married at the time of conception *or* the date of birth.

A biological father whose child is born "out of wedlock" is the putative but not legal father to the child. If a legal father is determined, he has the rights to care, custody, control, and earnings of the child and the right to inherit from the child. MCL 722.2 (Status of Minor and Child Support Act) and MCL 700.2103(b) (Estates and Protected Individuals Code). It is also important to identify the type of father the court is dealing with in the context of adoption proceedings to ensure that the appropriate statutes and court rules are followed so that the adoption is a valid and permanent arrangement.

*See Section 3.8 for more information on when the court may act upon a paternity complaint.

A father's paternity can be established in several ways both prior to and after the child's birth. Prior to the child's birth, paternity can be established, or substantial steps may be taken towards establishing paternity. This can be done by filing a Notice of Intent to Claim Paternity, a Notice of Intent to Release, or a Notice of Intent to Consent. Paternity is also established if the mother marries prior to the birth of the child. Prior to the child's birth, a complaint may also be filed under the Paternity Act; however, action on the complaint may be delayed until the child is born.* After the child is born, paternity may be established through proceedings pursuant to the Paternity Act, the Adoption Code, the Juvenile Code, the Uniform Interstate Family Support Act (UIFSA), or the Acknowledgment of Parentage Act.

3.4 Hearing to Identify the Father Pursuant to the Adoption Code

The majority of adoption cases involve a putative father. The Adoption Code provides that a hearing may be conducted to identify the child's father and determine or terminate his parental rights. MCL 710.36(1) provides:

> "If a child is claimed to be born out of wedlock and the mother executes or proposes to execute a release or consent relinquishing her rights to the child or joins in a petition for adoption filed by her husband, and the release or consent of the natural father cannot be obtained, the judge shall hold a hearing as soon as practical to determine whether the child was born out of wedlock, to determine the identity of the father, and to determine or terminate the rights of the father as provided in this section and [MCL 710.37 and MCL 710.39]."*

*See Section 3.3 for more information regarding a child "born out of wedlock. See Section 2.12 for more information on termination of parental rights pursuant to MCL 710.37 and 710.39.

Attached in Appendix B is the SCAO form "Petition for Hearing to Identify Father and Determine or Terminate His Rights."

A. Notice

MCL 710.36(3) provides that a notice of a hearing under MCL 710.36(1) must be served upon the following:

> "(a) A putative father who has timely filed a notice of intent to claim paternity* as provided in [MCL 710.33 or MCL 710.34].
>
> "(b) A putative father who was not served a notice of intent to release or consent at least 30 days before the expected date of confinement specified in the notice of intent to release or consent.
>
> "(c) Any other male who was not served pursuant to [MCL 710.34(1)] with a notice of intent to release or consent* and who the court has reason to believe may be the father of the child."

*See Section 3.5 for more information on notice of intent to claim paternity.

*See Section 3.6 for more information regarding Notice of Intent to Release or Consent.

The notice of hearing must inform the putative father that his failure to appear at the hearing shall constitute a denial of his interest in custody of the child, which denial shall result in the court's termination of his rights to the child. MCL 710.36(4).

Notice of a petition to identify a putative father and to determine or terminate his rights must be served on the individual or the individual's attorney in the manner provided in MCR 5.105(B)(1)(a) or (b). MCR 3.802(A)(2).

MCR 5.105(B)(1)(a) and (b) provide that personal service may be made on an attorney or other individuals. MCR 5.105(B)(1)(a)(i)–(iv) provide personal service on an attorney must be made by:

"(i) handing it to the attorney personally;

"(ii) leaving it at the attorney's office with a clerk or with some person in charge or, if no one is in charge or present, by leaving it in some conspicuous place there, or by electronically delivering a facsimile to the attorney's office;

"(iii) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there; or

"(iv) sending the paper by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the attorney receives the paper."

MCR 5.105(B)(1)(b)(i)–(iii) provides personal service must be made on other individuals by:

"(i) handing it to the individual personally;

"(ii) leaving it at the person's usual residence with some person of suitable age and discretion residing there; or

"(iii) sending the paper by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the individual receives the paper."

If the identity or whereabouts of the father is unascertainable, MCR 3.802(B) provides:

"(1) If service cannot be made under subrule (A)(2)(a)* because the identity of the father of a child born out of wedlock or the whereabouts of the identified father has not been ascertained after diligent inquiry, the petitioner must file proof, by affidavit or by declaration under MCR 2.114(B)(2), of the attempt to identify or locate the father. No further service is necessary before the hearing to identify the father and to determine or terminate his rights.

"(2) At the hearing, the court shall take evidence concerning the attempt to identify or locate the father. If the court finds that a reasonable attempt was made, the court shall proceed under MCL 710.37(2). If the court finds that a reasonable attempt was not made, the court shall adjourn the hearing under MCL 710.36(7) and shall

(a) order a further attempt to identify or locate the father so that service can be made under subrule (A)(2)(a), or

*Subrule (A)(2)(a) does not currently exist. The language of (A)(2)(a) and (A)(2)(b) were incorporated into subrule (A)(2) when the rules were amended in May 2002.

> (b) direct any manner of substituted service of the notice of hearing except service by publication."

The SCAO form "Declaration of Inability to Identify/Locate Father" is attached in Appendix B.

MCL 710.36(5) provides:

> "Proof of service of the notice of hearing required by [MCL 710.36(3)] shall be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of the hearing shall not be required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient."

The SCAO form "Notice of Hearing to Identify Father and Determine or Terminate His Rights" is attached in Appendix B.

B. Special Notice Provisions for Incarcerated Parties

In addition to the foregoing procedures for notification of a putative father special procedures must be followed when one of the parties to a hearing to identify the father and determine or terminate his parental rights is incarcerated. MCR 2.004 requires specific actions be undertaken in cases involving incarcerated parties.

MCR 2.004 applies to domestic relations actions involving minor children, and other actions involving the custody, guardianship, neglect, or foster-care placement of minor children, or the termination of parental rights, in which a party is incarcerated under the jurisdiction of the Department of Corrections. MCR 2.004(A)(1)–(2).

Responsibility of the Party Seeking an Order. Under MCR 2.004(B), a party seeking an order regarding a minor child must do the following:

> "(1) contact the department to confirm the incarceration and the incarcerated party's prison number and location;
>
> "(2) serve the incarcerated person with the petition or motion seeking an order regarding the minor child, and file proof with the court that the papers were served; and
>
> "(3) file with the court the petition or motion seeking an order regarding the minor child, stating that a party is incarcerated and providing the party's prison number and location; the caption of the petition or motion shall state that a telephonic hearing is required by this rule." MCR 2.004(B)(1)–(3).

In a hearing to identify the father and determine or terminate his parental rights, the petitioner is responsible for the foregoing actions.

Responsibility of the Court. Once a party has completed the foregoing requirements to the court's satisfaction, MCR 2.004(C) requires the court to:

> "issue an order requesting the department, or the facility where the party is located if it is not a department facility, to allow that party to participate with the court or its designee by way of a noncollect and unmonitored telephone call in a hearing or conference, including a friend of the court adjudicative hearing or meeting. The order shall include the date and time for the hearing, and the prisoner's name and prison identification number, and shall be served by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides."

The purpose of this telephone call is to determine the following:

> "(1) whether the incarcerated party has received adequate notice of the proceedings and has had an opportunity to respond and to participate,
>
> "(2) whether counsel is necessary in matters allowing for the appointment of counsel to assure that the incarcerated party's access to the court is protected,
>
> "(3) whether the incarcerated party is capable of self-representation, if that is the party's choice,
>
> "(4) how the incarcerated party can communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation in additional telephone calls, and
>
> "(5) the scheduling and nature of future proceedings, to the extent practicable, and the manner in which the incarcerated party may participate." MCR 2.004(E)(1)–(5).

Documentation and Correspondence to Incarcerated Party. MCR 2.004(D) requires all court documents or correspondence mailed to the incarcerated party to include the name and prison number of the incarcerated party on the envelope.

Denial of Relief and Sanctions. If the petitioner fails to comply with the requirements of MCR 2.004, the court must deny the petition. MCR 2.004(F)–(G) provide:

> "(F) A court may not grant the relief requested by the moving party concerning the minor child if the incarcerated party has not been

offered the opportunity to participate in the proceedings, as described in this rule. This provision shall not apply if the incarcerated party actually does participate in a telephone call."

"(G) The court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts."

C. Hearing

The court must conduct a hearing and take evidence as to the identity of the child's father. Based on the evidence, the court must enter a finding identifying the father or declaring that the identity of the father cannot be determined. MCL 710.36(6).

MCL 710.36(7) provides:

> "If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release or consent pursuant to [MCL 710.34(1)] or a notice required pursuant to subsection (3),* and who has neither waived his right to notice of hearing nor is present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing."

*See Section 3.4(A).

At the hearing, the court shall do the following:

- determine whether the child was "born out of wedlock,"*
- determine the identity of the father, and
- determine or terminate the rights of the father. MCL 710.36(1). See Section 2.12 for information on termination of the father's parental rights pursuant to the Adoption Code.

*The mother must claim that a child was "born out of wedlock" in order to proceed under this section of the Adoption Code. MCL 710.36(1).

Note: The court should carefully question the birth mother regarding the information contained in the petition to identify the father and determine or terminate his parental rights and the declaration of inability to locate the father. The information is critical to ensure that if a birth father is actually known he is given the proper notice and a hearing.

3.5 Notice of Intent to Claim Paternity

A Notice of Intent to Claim Paternity is a document that may only be filed by a putative father of a child "born out of wedlock." The notice ensures that the putative father is given notice of any proceedings involving the identity of the child's father or the termination of his parental rights.

*See Section 3.3 for a detailed discussion of the term "born out of wedlock."

For the purposes of a Notice of Intent to Claim Paternity, the definition of a child "born out of wedlock" is provided in the Adoption Code. The Adoption Code defines a child "born out of wedlock" as "a child conceived and born to a woman who was not married from the conception to the date of birth of the child, or a child whom the court has determined to be a child born during a marriage but not the issue of that marriage." MCL 710.22(g).*

Prior to the birth of a child "born out of wedlock," a putative father may file a statement of intent to claim paternity in any county in Michigan. MCL 710.33(1). The statement of claimed paternity must be made under oath; the notice (as a document) must be verified and contain the putative father's address. MCL 710.33(1).

See Appendix D for the form "Notice of Intent to Claim Paternity."

A. Court's Responsibility

Once a Notice of Intent to Claim Paternity has been filed with the court, the following business day the court is required to transmit the notice to the vital records division of the Department of Public Health. MCL 710.33(1).

B. The Department of Public Health's Responsibility

The director of the Department of Public Health is responsible for the form of the notice. MCL 710.33(1). See Appendix D for the Department of Public Health's form "Request for Verification of Notice of Intent to Claim Paternity for Adoption Purposes."

Once the vital records division receives a Notice of Intent from the court, it is responsible for sending a copy of the notice via first-class mail to the child's mother if her address is provided in the notice. MCL 710.33(1). The statute does not indicate the responsibility of the vital records division if the mother's address is not provided in the notice.

C. Effect of Filing

A person filing a Notice of Intent to Claim Paternity is presumed to be the child's father for purposes of adoption unless the mother denies that claimant is the child's father. MCL 710.33(2).

The filing of a Notice of Intent to Claim Paternity also creates a rebuttable presumption that the claimant is the child's father in child protective proceedings under the Juvenile Code. MCL 710.33(2).

The Notice of Intent to Claim Paternity is admissible in proceedings under the Paternity Act.* MCL 710.33(2).

* See Section 3.8 for more information regarding proceedings pursuant to the Paternity Act.

Upon the timely filing of a Notice of Intent to Claim Paternity, the claimant is entitled to notice of any hearing involving the child to determine the identity of the father or to terminate the father's parental rights.* MCL 710.33(3).

*See Section 3.4 regarding hearings to identify the father. See Sections 2.11–2.14 regarding termination of parental rights.

3.6 Notice of Intent to Release or Consent

A section of the Adoption Code, MCL 710.34, allows a mother to file a notice of intent to release her parental rights or consent to the child's adoption. The purpose of MCL 710.34 is to provide a putative father with notice of the mother's intent at the earliest possible date and to facilitate the child's early placement for adoption. MCL 710.34(1).

Prior to the birth of a child "born out of wedlock," a mother may file an ex parte petition seeking a notice of intent to release the expected child for adoption or a notice of intent to consent to the adoption of the child. MCL 710.34(1).

A petition for a notice of intent to release or consent must be verified and contain the following information:

- The approximate date and location of conception of the child and the expected date of the mother's confinement.
- The name or names of the alleged putative father or fathers.
- A request for the court to inform the putative father of his right to file a notice of intent to claim paternity* before the birth of the child, and to inform the putative father of the rights to which his filing of a notice of intent to claim paternity will entitle him pursuant to MCL 710.33.

*See Section 3.5 for information regarding notice of intent to claim paternity.

MCL 710.34(1).

Upon the filing of the petition, the court shall issue a notice of intent to release or consent. MCL 710.34(2) provides:

> "A notice of intent to release or consent shall:
>
> > "(a) Indicate the approximate date and location of conception of the child and the expected date of confinement of the mother.

> "(b) Inform the putative father of his right under [MCL 710.33(1)] to file a notice of intent to claim paternity before the birth of the child.
>
> "(c) Inform the putative father of the rights to which his filing of a notice of intent to claim paternity will entitle him under [MCL 710.33(3)].
>
> "(d) Inform the putative father that his failure to file a notice of intent to claim paternity before the expected date of confinement or before the birth of the child, whichever is later, shall constitute a waiver of his right to receive the notice to which he would otherwise be entitled under [MCL 710.33(3)] and shall constitute a denial of his interest in custody of the child, which denial shall result in the court's termination of his rights to the child."

The form of the notice must be approved by the Supreme Court Administrator pursuant to MCL 710.34(3). The approved form is attached in Appendix B.

The notice of intent to release shall be personally served upon the putative father by any officer or person authorized to serve process by the court and a proof of service shall be filed with the court. MCL 710.34(1) and MCR 3.802.

If the father is served with a notice at least 30 days before the expected date of confinement and does not respond, it is the only notice of the proceedings that he is entitled to receive. MCL 710.34(2)(d) and MCL 710.36(3)(b).

3.7 Acknowledgment of Parentage

The Acknowledgment of Parentage Act, MCL 722.1001 et seq., provides a means for the mother and father of a child to establish the child's parentage without instituting paternity proceedings. Generally, in the adoption of an infant, the mother and father have not signed an Acknowledgment of Parentage. However, they may sign an acknowledgment that establishes a legal father. This section is provided for guidance in cases where an acknowledgment has been filed.

> **Note:** Once an Acknowledgment of Parentage has been filed, the father identified in the acknowledgment is the legal father. A legal father's parental rights may only be involuntarily terminated pursuant to a step-parent adoption or pursuant to the Juvenile Code. See Sections 2.11–2.13 for information regarding termination of parental rights.

MCL 722.1002(b) defines a "child" as "a child conceived and born to a woman who was not married at the time of conception or the date of birth of the child, or a child that the circuit court determines was born or conceived during a marriage but is not the issue of that marriage." This definition of "child" is similar to the definition of a child "born out of wedlock" provided in the Paternity Act and the Adoption Code. However, this definition differs slightly from the definitions provided by the Paternity Act and the Adoption Code. Both the Paternity Act and the Adoption Code indicate that the mother was not married from the time of conception *to* the date of birth. The Acknowledgment of Parentage Act indicates the mother was not married at the time of conception *or* the date of birth.*

*See Section 3.8 for more information on the Paternity Act. See Section 3.3 for more information regarding a "child born out of wedlock" in the Adoption Code.

MCL 722.1003(1) provides:

> "(1) If a child is born out of wedlock, a man is considered to be the natural father of that child if the man joins with the mother of the child and acknowledges that child as his child by completing a form that is an acknowledgment of parentage."

If either parent is a minor, he or she may sign an Acknowledgment of Parentage, and the signature has the same effect as if the minor were an adult. MCL 722.1009.

In a proceeding under the Acknowledgment of Parentage Act, the court has discretion to appoint a next friend or guardian ad litem to represent a minor parent. MCL 722.1009.

A. The Acknowledgment

The Acknowledgment of Parentage form must be prepared or approved by the state registrar. MCL 722.1008. The approved form must be made available to the public through the FIA, prosecuting attorneys, and hospitals. MCL 722.1008. Attached in Appendix E is the approved form and instructions for completion of the form.

MCL 722.1007 provides that the Acknowledgment of Parentage form must include at least all of the following written notices to the parties:

> "(a) The acknowledgment of parentage is a legal, public document.
>
> "(b) Completion of the acknowledgment is voluntary.
>
> "(c) The mother has custody of the child unless otherwise determined by the court or agreed by the parties in writing.
>
> "(d) Either parent may assert a claim in court for parenting time or custody.

"(e) The parents have a right to notice and a hearing regarding the adoption of the child.

"(f) Both parents have the responsibility to support the child and to comply with a court or administrative order for the child's support.

"(g) Notice that signing the acknowledgment waives the following:

*See Section 3.8(I) regarding genetic testing pursuant to the Paternity Act.

(i) Blood or genetic tests to determine if the man is the biological father of the child.*

*See Section 3.8(H) regarding the right to counsel in paternity proceedings.

(ii) Any right to an attorney,* including the prosecuting attorney or an attorney appointed by the court in the case of indigency, to represent either party in a court action to determine if the man is the biological father of the child.

(iii) A trial to determine if the man is the biological father of the child."

MCL 722.1003(2) provides:

> "An acknowledgment of parentage form is valid and effective if signed by the mother and father and those signatures are notarized by a notary public authorized by the state in which the acknowledgment is signed. An acknowledgment may be signed any time during the child's lifetime."

A copy of the completed acknowledgment must be provided to both parents at the time the acknowledgment is signed. MCL 722.1003(3). Typically acknowledgments are signed at the hospital where the child is born; however, if the parents agree to the child's parentage at any time in the child's life, the parents may sign an Acknowledgment of Parentage. MCL 722.1003(2). Acknowledgments are available at FIA offices, hospitals, or on-line from the Michigan Department of Community Health.

B. Effect of Acknowledgment

An Acknowledgment of Parentage establishes the child's paternity. MCL 722.1004 provides:

> "An acknowledgment signed under this act establishes paternity and the acknowledgment may be the basis for court ordered child support, custody, or parenting time without further adjudication under the paternity act, Act No. 205 of the Public Acts of 1956, being sections 722.711 to 722.730 of the Michigan Compiled

> Laws. The child who is the subject of the acknowledgment shall bear the same relationship to the mother and the man signing as the father as a child born or conceived during a marriage and shall have the identical status, rights, and duties of a child born in lawful wedlock effective from birth."

After a mother and father sign an Acknowledgment of Parentage, the completed original must be filed with the state registrar. MCL 722.1005(1). Upon receipt of an acknowledgment, the registrar is required to review the form, and if the acknowledgment appears to have been properly completed and notarized, then the registrar must file the acknowledgment in a parentage registry office, which must maintain the document as a permanent record. MCL 722.1005(1).

Once a completed Acknowledgment of Parentage has been filed, a new birth certificate may be prepared. MCL 722.1005(3) and MCL 333.2831(b).

Pursuant to MCL 722.1010 the circuit court has general personal jurisdiction over the issues of support, custody, and parenting time of the child when a mother and father sign and file an Acknowledgment of Parentage. MCL 722.1010 provides:

> "Except as otherwise provided by law, a mother and father who sign an acknowledgment that is filed as prescribed by [MCL 722.1005] are consenting to the general, personal jurisdiction of the courts of record of this state regarding the issues of the support, custody, and parenting time of the child."

C. Presumption of Custody

Once the mother and the father have signed the Acknowledgment of Parentage, custody of the child is presumed to be with the mother unless a court has determined otherwise or the parties have agreed in writing to some other custody arrangement. MCL 722.1006.

D. Revocation of Acknowledgment

MCL 722.1011 provides a procedure for filing and determining a claim for revocation of an acknowledgment.

1. Filing

A revocation of an acknowledgment may be filed by:

- the mother,
- the man who signed the acknowledgment,
- the child who is the subject of the acknowledgment, or

- a prosecuting attorney. MCL 722.1011(1).

MCL 722.1011(1) also provides:

> "If filed as an original action, the claim shall be filed in the circuit court of the county where either the mother or man resides. If neither of those parties lives in this state, the claim shall be filed in the county where the child resides. A claim for revocation may be filed as a motion in an existing action for child support, custody, or parenting time in the county where the action is and all provisions in this act apply as if it were an original action."

2. Documentation

A claim for revocation must be supported by an affidavit signed by the claimant setting forth facts that constitute 1 of the following:

> "(a) Mistake of fact.
>
> "(b) Newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.
>
> "(c) Fraud.
>
> "(d) Misrepresentation or misconduct.
>
> "(e) Duress in signing the acknowledgment." MCL 722.1011(2).

3. Court Determination

*See Section 3.8(I) for more information on genetic testing.

If the court finds that the affidavit is sufficient, the court may order blood or genetic tests* at the expense of the petitioner, or may take other action the court considers appropriate. MCL 722.1011(3).

The party filing the claim for revocation has the burden of proving, by clear and convincing evidence, that the man is not the father and that, considering the equities of the case, revocation of the acknowledgment is proper. MCL 722.1011(3).

A copy of the order of revocation must be sent by the clerk of the court to the state registrar. The state registrar must vacate the acknowledgment and may amend the birth certificate as prescribed by the order of revocation. MCL 722.1011(4).

MCL 722.1011(5) provides:

> "Whether the claim for revocation under this act arises as an original action or as a motion in another action, the prosecuting attorney, an attorney appointed by the county, or an attorney

> appointed by the court is not required to represent either party regarding the claim for revocation."

A claim for revocation may be filed pursuant to the foregoing statute, even if the acknowledgment was signed prior to the effective date of the act, June 1, 1997. MCL 722.1012.

E. Validity of Acknowledgments Signed Prior to June 1, 1997

An acknowledgment signed prior to the effective date of the Acknowledgment of Parentage Act is not affected by the Act. MCL 722.1012.

3.8 The Paternity Act

Please note that the *only* ways to establish or identify the father pursuant to the Adoption Code are found in Sections 3.4, 3.5, and 3.6. The means of identifying or establishing a father provided in this section generally occur *prior* to the filing of an adoption petition. The information is provided as a basic framework to assist the court in identifying the legal father. The information may also be helpful to a court when a father comes forward prior to an adoption proceeding and attempts to establish himself as the legal father of the adoptee.

The Paternity Act, MCL 722.711 et seq., sets forth procedures for establishing the paternity and support of a child "born out of wedlock." Although the main purpose of the Paternity Act is to obtain support for a child, please note that the discussion in this section is limited to establishing paternity and *not* establishing support.

MCL 722.711(a) defines a "child born out of wedlock" as:

> "a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage."

In order to have standing to seek relief under the Paternity Act, the party filing the complaint must plead and prove that the child was "born out of wedlock." *Altman v Nelson*, 197 Mich App 467, 475-76 (1992).

Case Law Interpreting "Child Born Out of Wedlock"

As quoted above, the Paternity Act definition of "born out of wedlock" encompasses two distinct situations. The first situation is where a child is "begotten and born to a woman who was not married from the conception to the date of birth of the child." The second situation refers to a child "the court has determined to be a child born or conceived during a marriage but not the

issue of that marriage." Subsection A discusses the first situation, while subsection B discusses the second situation. The following cases also extensively discuss a party's standing. The concepts of a child "born out of wedlock" and standing are intertwined. In order to have standing, a party must establish that the child was "born out of wedlock." Accordingly, the following cases are also relevant to standing.

A. A Child "Begotten and Born to a Woman Who Was Not Married from the Conception to the Date of Birth of the Child"

- ***Squires v Roberts*, 41 Mich App 96 (1972)**

In *Squires*, the plaintiff filed a complaint pursuant to the Paternity Act requesting the court declare the defendant to be her child's father. 41 Mich App at 97. At trial, the plaintiff did not introduce any evidence regarding the date of conception or her marital status from the date of conception to the child's birth. The defendant moved for a directed verdict, which the trial court treated as a motion to dismiss and granted based on the plaintiff's failure to establish that she was an unmarried woman from the date of conception to the child's birth. 41 Mich App at 97. The Court of Appeals affirmed the lower court's decision and indicated that it was appropriate for the lower court to dismiss the case where the plaintiff failed to submit evidence of the allegations in her complaint. The allegation that the child was "born out of wedlock" was not sustained because the plaintiff failed to provide any evidence of her marital status from the time of conception to the birth of the child.

- ***Hinterman v Stine*, 55 Mich App 282 (1974)**

On November 2, 1970, the plaintiff was divorced. Nine and one-half months later, on August 16, 1971, she gave birth to a child. The plaintiff then filed a complaint pursuant to the Paternity Act, alleging that the defendant was the child's father. 55 Mich App at 282. After hearing testimony, the court found that the mother was an unmarried woman at the time of conception and birth and that the defendant was the father of the child. 55 Mich App at 284. The defendant appealed claiming it was error to admit the plaintiff's testimony that she was menstruating at the time of her divorce, without expert evidence concerning menstruation, pregnancy, and post-conception bleeding. The defendant asserted that without such testimony the court could not determine that the mother did not conceive the child prior to her divorce on November 2nd. Accordingly, if she conceived the child prior to the divorce, then she would not have standing pursuant to the Paternity Act because the child would not have been "born out of wedlock." 55 Mich App at 284. The Court of Appeals affirmed the lower court's decision, indicating that although expert evidence would have been helpful, it was not essential. 55 Mich App at 285. The court may view the evidence in light of its own general knowledge and experience, and a finding that the mother conceived after her divorce was not error. 55 Mich App at 285-86.

- ***Spielmaker v Lee*, 205 Mich App 51 (1994)**

In *Spielmaker*, the Court held that in order for a child to be determined "born out of wedlock," "it is necessary that the mother have been 'not married' for the entire gestation, or 'from the conception to the date of birth of the child.'" 205 Mich App at 58. In *Spielmaker*, the mother of a child was not married at the time of conception. However, before the child was born, she married a man who was not the child's biological father and his name was placed on the child's birth certificate. The natural father instituted a paternity action seeking a determination that he was the child's legal father. The mother filed a motion for summary disposition on the grounds that the natural father did not have standing under the Paternity Act because the child was not "born out of wedlock." The mother claimed that because she married prior to the child's birth, the child was born during the marriage; therefore, the child was not "born out of wedlock." 205 Mich App at 52-53. The Court of Appeals agreed with the mother and indicated that "a child is deemed to have been born out of wedlock only if the mother was unmarried for the entire time from conception to birth or if a court has previously determined that the child was not issue of a marriage." 205 Mich App at 60. The Court of Appeals reversed the lower court's holding and provided that the natural father did not have standing to pursue an action under the Paternity Act. The Court also expressed dissatisfaction with the result and stated:

> "It is indeed ironic that, at a time when much criticism is leveled at 'deadbeat dads' who fail to assume responsibility for their children and there is a great emphasis placed on the need for fathers to become more involved in the lives of their children, we are faced with a father who wishes to do precisely that yet we are obligated to deny him the opportunity. Indeed, we are somewhat surprised that we were not called upon to address the issue whether the statute denies equal protection inasmuch as defendant may initiate the appropriate proceedings to have plaintiff determined to be the father of her child at any time she or her husband chooses, while plaintiff may not initiate such proceedings until such time as defendant or her husband choose to allow him to do so by having initiated their own proceeding to determine that the child is not issue of the marriage." 205 Mich App at 59-60.

B. A Child That the "Court Has Determined to Be a Child Born or Conceived During a Marriage but Not the Issue of That Marriage"

- ***Girard v Wagenmaker*, 437 Mich 231 (1991)**

In *Girard*, Larry Girard (Girard) filed a complaint against Judy Wagenmaker (Wagenmaker), claiming that he was the father of a child conceived and born while Wagenmaker was married to her husband, Harvey Wagenmaker. The complaint alleged that the child was not a child of the marriage and requested

the court determine the child's paternity. Wagenmaker subsequently filed a motion for summary disposition alleging that Girard lacked standing because he had failed to show that the child was "born out of wedlock." Wagenmaker argued that the issue of whether or not a child was "born out of wedlock" had to be *previously* determined by a court since she was married at the time of the conception and birth of the child. The lower court granted the motion for summary disposition and indicated that Girard did not have standing because a *prior* determination that the child was not an issue of the marriage was necessary. 437 Mich at 236. Upon review the Michigan Supreme Court found that, "[f]or a putative father to be able to file a proper complaint in a circuit court, MCL 722.711(a); MSA 25.491(a), a circuit court must have made a determination that the child was not the issue of the *marriage at the time of filing the complaint.*" 437 Mich at 242–243. [Emphasis in original.] The Court relied upon the language "has determined" contained in the statute, which indicated that the legislature intended for the determination to be made *prior* to the filing of the complaint.

The dissent in *Girard* argued that the Court's finding that the determination must be made by a prior court creates a "catch-22" for putative fathers. The dissent stated that in effect Girard "is turned away at the courthouse door and told that he has no standing to litigate his paternity claim unless *that very issue has already been litigated* in some prior proceeding. Yet the question whether his putative child is or is not 'the issue of [the mother's] marriage' is, in part, *precisely* what he seeks to determine by filing his paternity claim in the first place." 437 Mich at 261. [Emphasis in original.]

The dissent also stated that the statutory language requiring "the court" to have made the prior determination, rather than "a court," seemed to suggest that the statute is referring to the same circuit court that would hear the paternity claim. 437 Mich at 257–58, n 7.

Note: The Court of Appeals has held that the "prior-court determination" that the child was "born out of wedlock" may occur in the context of a divorce proceeding or a child protective proceeding. *Opland v Kiesgan,* 234 Mich App 352, 359 (1999) and *Afshar v Zamarron,* 209 Mich App 86, 92 (1995).

- ***Hauser v Reilly*, 212 Mich App 184 (1995)**

In *Hauser*, a man outside of a marriage (Hauser) filed a complaint pursuant to the Paternity Act, requesting an order of filiation indicating that he was the child's father. The child's mother (Reilly) was married to another man at the time the child was conceived and born. The parties had a paternity test that indicated a 99.99% probability that Hauser was the child's father. Reilly filed a motion for summary disposition indicating that the child was not "born out of wedlock" and therefore Hauser lacked standing pursuant to the Paternity Act. The lower court agreed and granted the motion for summary disposition. Hauser appealed, claiming that the Paternity Act deprived him of due process

and equal protection of the laws. The Court of Appeals rejected both arguments. On the issue of due process the Court indicated:

> "[I]f plaintiff in this case had an established relationship with his child, we would hold that he had a protected liberty interest in that relationship that entitled him to due process of law. However, because plaintiff has no such relationship, we hold that the Paternity Act did not deny him his right to due process." 212 Mich App at 188.

The Court of Appeals also rejected the claim that the Paternity Act violated the Equal Protection Clause of the United States Constitution. The Court indicated that equal protection requires that persons under similar circumstances be treated the same. However, the biological parents and the putative father are not under "similar circumstances." The father in this case is "an unwed father who has never had legal custody of the child and has never shouldered any responsibility with respect to the daily supervision, education, protection, or care of the child." 212 Mich App at 190. The mother in this case "immediately became responsible for the child and reinforced her commitment to the child on a daily basis." 212 Mich App at 190. The Court of Appeals denied the father's request and affirmed the lower court's decision to grant summary disposition.

The Court of Appeals also expressed the following policy concerns:

> "If defendant and her current husband were to divorce, she would have standing to force [Hauser] to pay child support for his child. *Girard, supra* at 263. Yet, plaintiff is prohibited from establishing a relationship with that child. It is unfortunate that plaintiff could be saddled with the financial responsibilities of raising a child without knowing any of the joys. However, this Court may not repeal a statute on the basis of policy concerns. That is the job of the Legislature. *People v Kirby*, 440 Mich 485, 493-494; 487 NW2d 404 (1992). While we encourage the Legislature to reconsider the effects of this law, we must have a constitutional basis for invalidating a statute. In this case, no such constitutional basis exists." 212 Mich App at 190–91.

- ***Dep't of Social Services v Baayoun,* 204 Mich App 170 (1994)**

In *Baayoun,* the Department of Social Services* filed a complaint for paternity alleging that Baayoun was the father of a child born to Loretta Jean Mathieu (Mathieu). Baayoun filed a motion for summary disposition on the ground that the plaintiff lacked standing under the Paternity Act because the child was not "born out of wedlock." The child was conceived when Mathieu was married, and no determination had been made by a court that the child was not an issue of the marriage. Mathieu was four months pregnant at the time of her divorce, and her husband was unaware of her pregnancy. The complaint for divorce alleged that there was no "issue of the marriage." The Court of Appeals held:

*Now the Family Independence Agency.

> "[P]laintiffs did not have standing to bring this action because there was no prior determination that the child was not the issue of the marriage and the child was conceived during the marriage. . . . The default judgment of divorce is silent with regard to the question of paternity and child support, and it indicates that Joseph was not aware that Loretta was pregnant at the time. Thus, the divorce judgment cannot be deemed to have determined the issue of paternity." 204 Mich App at 176.

- ***Afshar v Zamarron*, 209 Mich App 86 (1995)**

In *Afshar*, the defendant gave birth to a child while she was married, but a complaint for divorce had been filed. In the complaint for divorce, the defendant's husband indicated that blood tests were conducted and it was determined that he could not be the child's father. 209 Mich App at 88. When the judgment of divorce was granted, no mention was made of the those facts and no provisions for custody or support were made with regards to this child. After the divorce, the plaintiff and the defendant signed an agreement acknowledging his paternity of the child. Subsequently, the plaintiff filed a complaint, which sought a determination of paternity and custody. 209 Mich App at 88–89. The defendant filed a motion for summary disposition on the ground that the plaintiff did not have standing under the Paternity Act because there had been no prior court determination that the child was not an issue of the marriage. 209 Mich App at 89. The trial court agreed and granted the motion for summary disposition. The Court of Appeals reversed, finding that the plaintiff did have standing pursuant to the Paternity Act. 209 Mich App at 92. The Court provided:

> "[A] divorce judgment that is specific with regard to the question of custody and support of one minor child of the marriage and that is silent with regard to another child may, under appropriate circumstances, be deemed to have determined the issue of paternity. The present case presents an example of such circumstances. Jose alleged in his complaint that he could not be Jessica's biological father and submitted blood test results in support of the allegation. Defendant admitted the allegation. In a recorded divorce settlement, the parties acknowledged that there was only one minor child of the marriage. The judgment of divorce provides for the custody and support of that child but not for Jessica. Although the judgment of divorce makes no specific finding with regard to Jessica's paternity, the determination that Jessica is not issue of the marriage is implicit in the judgment of divorce." 209 Mich App at 91-92.

The Court distinguished its holding from the holding in *Dep't of Social Services v Baayoun*, 204 Mich App 170 (1994). The Court indicated that in *Baayoun*, when the parties divorced, the husband was not aware of his wife's pregnancy. As such, there could not have been a showing that the parties

deliberately considered the matter and chose to leave the child out of the divorce decree.

- ***McHone v Sosnowski*, 239 Mich App 674 (2000)**

In *McHone,* the plaintiff (McHone) filed a complaint seeking an order of filiation and support that recognized him as the father of one of the defendant's children. The defendant (Sosnowski) gave birth to three children during her marriage to David A. Sosnowski. McHone claimed that the last child born during the marriage was not a child of the marriage, and that he was the biological father of that child. Ten months after the birth of the child at issue in this case, the Sosnowskis were divorced. The divorce judgment specifically addressed custody, support, and visitation for all three children. Sosnowski filed a motion for summary disposition indicating that the child was born while she was still married to David Sosnowski, so the child was an issue of the marriage, and, therefore, McHone lacking standing to file suit. The lower court granted the motion for summary disposition indicating that McHone lacked standing. McHone then appealed claiming that because he had established a relationship with the child, the Paternity Act deprived him of a recognized liberty interest without due process. McHone urged the Court to apply *Hauser v Reilly*, 212 Mich App 184 (1995) (discussed above). The Court declined to apply *Hauser* and indicated:

> "[W]hile in the instant case plaintiff has established some degree of parenting relationship with Joshua, we decline to apply the reasoning in *Hauser* to this case. Further, since the Court in *Hauser* found no parenting relationship of any kind to exist between the plaintiff and the child, an analysis of a liberty interest based on a substantial parent-child relationship was not essential to the outcome of the case." 239 Mich App at 679.

The Court indicated that *Girard v Wagenmaker*, 437 Mich 231 (1991), was still controlling of the issue, and, therefore, McHone lacked standing to proceed in a paternity action. 239 Mich App at 679-80.

- ***Opland v Kiesgan*, 234 Mich App 352 (1999)**

In *Opland*, the mother was married at the time of conception and birth. Shortly after the birth, she and her husband divorced, and the divorce decree indicated the child was a child of the marriage. The mother then filed a complaint for paternity against the biological father. The court dismissed the case, indicating that the mother had no standing because there had been no *prior* court determination that the child was not an issue of the marriage. 234 Mich App at 356. The mother and her ex-husband subsequently filed a consent order modifying the divorce decree. The amended divorce judgment indicated that the child was not an issue of the marriage. 234 Mich App at 357. The mother and child* then jointly filed a complaint for paternity. The lower court granted the biological father summary disposition after concluding that the substantive facts had not changed since the prior paternity action was

*See Section 3.8(C) for more information on a child's ability to pursue paternity under the Paternity Act.

dismissed. 234 Mich App at 357. The Court of Appeals reversed indicating that the mother currently had standing to proceed with the paternity action. 234 Mich App at 358-59. The Court stated:

> "In *Dep't of Social Services v Baayoun*, 204 Mich App 170, 176; 514 NW2d 522 (1994), we noted 'that the mother may secure a determination that her child was not an issue of the marriage through postjudgment divorce proceedings.' Similarly in *Dep't of Social Services v Carter*, 201 Mich App 643, 649; 506 NW2d 603 (1993), we stated: 'After obtaining an amended judgment of divorce that provided that the minor child was not the issue of the marriage, plaintiffs then could refile the paternity action against defendant.' Although these passages are dicta, we find the approach recommended to be an appropriate response to the *Girard* prior-court-determination requirement." 234 Mich App at 358-59.

The Court of Appeals concluded that the proper course of action for the mother, after her earlier suit was dismissed, was to return to the divorce court to have the child determined not to be an issue of the marriage and then file a paternity complaint. 234 Mich App at 358.

C. Who May Bring a Paternity Action

*See Section 3.3 for more information on the term "born out of wedlock."

If a child is "born out of wedlock," the mother, the father, the child, or the FIA may file a complaint seeking establishment of paternity pursuant to the Paternity Act.*

1. The Mother

MCL 722.714(1) provides that an action pursuant to the Paternity Act may be brought by the mother in the circuit court.

MCL 722.711(c) defines mother as "the mother of a child born out of wedlock."

*For a detailed discussion of *Opland*, see Section 3.8(B).

- ***Opland v Kiesgan*, 234 Mich App 352 (1999)***

In *Opland*, the Court of Appeals held that when a child is born during a marriage but is not an issue of the marriage, the proper course of action for establishing paternity is to have the child determined not to be an issue of the marriage through divorce proceedings and then to file a paternity complaint. 234 Mich App at 358.

2. Father

MCL 722.714(1) provides that an action pursuant to the Paternity Act may be brought by the father in the circuit court.

Although the Paternity Act provides a definition of "mother," the act does not define "father." See Section 3.1, above, for general definitions of the various types of fathers.* The following cases provide some guidance in determining if a "father" has standing to pursue an action pursuant to the Paternity Act:

*Section 3.2 discusses due process considerations for fathers.

- ***Girard v Wagenmaker*, 437 Mich 231 (1991)***

*For a more detailed discussion of *Girard,* see Section 3.8(B).

In *Girard*, the Court found that when a child is born during a marriage, a man outside of the marriage only has standing pursuant to the Paternity Act when a *prior* court has determined that the child is not an issue of the marriage. 437 Mich at 242-43. Prior court determinations may be obtained in divorce or child protective proceedings. *Opland v Kiesgan,* 234 Mich App 352, 359 (1999) and *Afshar v Zamarron*, 209 Mich App 86, 92 (1995).

- ***Hauser v Reilly*, 212 Mich App 184 (1995)***

*See Section 3.8(B) for a detailed discussion of the *Hauser* case.

In *Hauser*, the Court held that a man outside of the marriage does not have standing to pursue paternity of a child born within that marriage, even where genetic testing proves that he is the child's biological father. 212 Mich App at 188-91.

- ***Spielmaker v Lee*, 205 Mich App 51 (1994)***

*See Section 3.8(A) for a detailed discussion of the *Spielmaker* case.

In *Spielmaker*, the Court found a natural father does not have standing to pursue an action under the Paternity Act where the mother is unmarried at the time of conception but married to another man at the time of the child's birth. 205 Mich App at 59-60.

- ***McHone v Sosnowski,* 239 Mich App 674 (2000)***

*See Section 3.8(B) for a detailed discussion of the *McHone* case.

In *McHone*, the Court found that a natural father does not have standing to pursue a paternity action where the child was born when the mother was married to another man, even where the natural father has established a relationship with the child. 239 Mich App at 679-80.

3. Child

MCL 722.714(1) provides that an action pursuant to the Paternity Act may be brought by a child who became 18 years of age after August 15, 1984 and before June 2, 1986.

The Paternity Act defines child as "a child born out of wedlock." MCL 722.711(b). "Child born out of wedlock" is defined as "a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage." MCL 722.711(a).*

*For more information on the term born "out of wedlock," see Section 3.3.

- ***Opland v Kiesgan*, 234 Mich App 352 (1999)**

In *Opland*, the mother was married at the time of the child's conception and birth. Shortly after the birth, she and her husband divorced, and the divorce decree indicated the child was a child of the marriage. The mother then filed a complaint for paternity against the biological father. The court dismissed the case, indicating the mother had no standing because the child was an issue of the marriage and not "born out of wedlock." The mother and her ex-husband subsequently filed an amended order of divorce which indicated that the child was not an issue of the marriage. The mother and child then jointly filed a complaint for paternity. The lower court dismissed the complaint indicating that neither party had standing. The Court of Appeals reversed the lower court's determination and indicated that the child had standing to bring a paternity action. Although the child did not meet the specifications outlined in MCL 722.714(1), the Court found:

> "[T]he Equal Protection Clauses of both the United States Constitution, US Const, Am XIV, and the Michigan Constitution, Const 1963, art 1, § 2, are violated by a legislative scheme allowing a minor child born in wedlock the right to bring a paternity suit while denying that right to a minor child born out of wedlock. *Spada v Pauley,* 149 Mich App 196, 200, 203–206; 385 NW2d 746 (1986). As a remedy, this Court concluded that 'the traditional equitable jurisdiction of the circuit court may be invoked to provide [a minor child born out of wedlock] with a forum for his [or her] claims.' *Id.* at 206." 234 Mich App at 367.

Accordingly, the Court of Appeals reversed the lower court's finding and indicated that the child has standing. 234 Mich App at 368.

Special Considerations for Minors. The Paternity Act provides special consideration for minors who are parties to a paternity action. MCL 722.714(9) provides:

> "It is unnecessary in any proceedings under this act commenced by or against a minor to have a next friend or guardian ad litem appointed for the minor unless required by the circuit judge. A minor may prosecute or defend any proceedings in the same manner and with the same effect as if he or she were of legal age."

If a child files a complaint pursuant to the Paternity Act and the court enters an order of filiation, that order is enforced in the same manner as if one of the child's parents had filed the complaint. MCL 722.714(12) provides:

> "If a determination of paternity is made under this act, the court may enter an order of filiation as provided in [MCL 722.717]. Regardless of who commences an action under this act, an order of filiation entered under this act has the same effect, is subject to

> the same provisions, and is enforced in the same manner as an order of filiation entered on complaint of the mother or father."

4. The Family Independence Agency

MCL 722.714(1) provides that the FIA may file an action under the Paternity Act.

MCL 722.714(10) provides:

> "If a child born out of wedlock is being supported in whole or in part by public assistance, including medical assistance, the family independence agency may file a complaint on behalf of the child in the circuit court in the county in which the child resides. The mother or alleged father of the child shall be made a party plaintiff and notified of the hearing on the complaint by summons. The complaint made by the family independence agency shall be verified by the director of the family independence agency, or his or her designated representative, or by the director of the county family independence agency of the county in which an action is brought, or the county director's designated representative."

Any party filing pursuant to the Paternity Act, including the FIA, must establish that the child was "born out of wedlock" in order to have standing. *Dep't of Social Services v Baayoun*, 204 Mich App 170, 176 (1994).*

*See Section 3.8(B) for a detailed discussion of the *Baayoun* case.

Special Considerations for FIA. If the FIA files a complaint pursuant to the Paternity Act and the court enters an order of filiation, that order is enforced in the same manner as if one of the child's parents had filed the complaint. MCL 722.714(12) provides:

> "If a determination of paternity is made under this act, the court may enter an order of filiation as provided in [MCL 722.717]. Regardless of who commences an action under this act, an order of filiation entered under this act has the same effect, is subject to the same provisions, and is enforced in the same manner as an order of filiation entered on complaint of the mother or father."

D. Jurisdiction and Venue

Actions pursuant to the Paternity Act should be brought in the circuit court of the county where the mother or child resides. If the mother and child reside outside of Michigan, then the complaint should be filed in the county where the putative father resides or is found. The fact that the child was conceived or born outside of Michigan does not bar the entering of the complaint against the putative father. MCL 722.714(1).

The Family Division of the Circuit Court has "sole and exclusive" subject matter jurisdiction in paternity cases commenced after January 1, 1998. MCL 600.1021(1)(h).

Subject Matter Jurisdiction and Standing. Subject matter jurisdiction was defined by the Court of Appeals in *Altman v Nelson*, 197 Mich App 467, 472 (1992) as "the right of the court to exercise judicial power over the class of cases, not the particular case before it."

The Court in *Altman* further explained the difference between subject matter jurisdiction and standing as follows:

> "[S]tanding relates to the position or situation of the plaintiff in relation to the cause of action and the other parties at the time the plaintiff seeks relief from the court. Generally, in order to have standing, a party must merely show a substantial interest and a personal stake in the outcome of the controversy. *Rogan v Morton*, 167 Mich App 483, 486; 423 NW2d 237 (1988). However, when the cause of action is created by statute, the plaintiff may be required to allege specific facts in order to have standing. Such is the case in a paternity action. *Girard,* [437 Mich at 234 (1991)]. In order to have standing to seek relief under the Paternity Act, plaintiff must allege that the child was born out of wedlock." 197 Mich App at 475-76.

In *Altman*, the plaintiff filed a complaint seeking a determination that he was the father of the plaintiff's child. In the complaint, he indicated that the defendant was not married at the time of the child's birth. 197 Mich App at 469. The defendant filed an answer alleging that she was married at the time of the child's birth and submitted a copy of her marriage license and the child's birth certificate which listed her husband as the child's father. The defendant never challenged the plaintiff's standing. After genetic testing, the court issued an order declaring the plaintiff to be the legal father of the child. 197 Mich App at 470. A year after the order was entered, the plaintiff filed a petition for transfer of custody in the paternity action. The defendant opposed the petition and indicated that her husband was the child's "legal and equitable father." The trial court eventually dismissed the case for want of jurisdiction. The court indicated that plaintiff did not have standing in the paternity action and the order of filiation was therefore improper, so physical custody should remain with the defendant. 197 Mich App at 470-71. The Court of Appeals reviewed the concepts of subject matter jurisdiction and standing and held the following:

> "[T]he allegations in plaintiff's paternity complaint were sufficient on their face to show that the circuit court had subject-matter jurisdiction of the action, and that plaintiff claimed standing to bring the action. Because the trial court had jurisdiction of the subject-matter and of the parties, the action taken by the trial court, though involving an erroneous exercise of

> jurisdiction, was not void . . . . Accordingly, the trial court erred in vacating its previous orders on the basis of a finding that they were void." 197 Mich App at 477.

E. Complaint

MCL 722.714(3) indicates that a complaint may be filed during the pregnancy of the child's mother or at any time before the child reaches age eighteen. However, MCL 722.715(2) provides if the child is not born by the time set for trial, then the case must be continued until the child is born, unless the defendant agrees to proceed. This creates a dilemma for determining when a court may act upon a paternity complaint. Although the complaint may be filed, in order to have standing, the petitioner must allege the child was "born out of wedlock." Obviously, if the child is not born, then he or she cannot fit the definition of a child "*born* out of wedlock."

An action to determine paternity shall not be brought pursuant to the Paternity Act if the child's father acknowledged paternity pursuant to the Acknowledgment of Parentage Act* or if the child's paternity is established under the law of another state. MCL 722.714(2).

*See Section 3.7 regarding the Acknowledg–ment of Parentage Act.

The complaint must include the following information:

- the name of the person believed to be the father of the child,
- the time, as near as possible, when the child was conceived, and
- the place, as near as possible, where the child was conceived. MCL 722.714(5).

The complaint must be verified by oath or affirmation. MCL 722.714(4). If the complaint is filed by the FIA, then the facts must be stated on information and belief. MCL 722.714(5).

The SCAO approved "Complaint Regarding Paternity and Notice of Right to an Attorney" is contained in Appendix B.

Falsely identifying a man as a child's father in a paternity complaint is a crime. MCL 722.722 provides:

> "Any person making a false complaint under this act as to identity of the father, or the aiding or abetting therein, shall be guilty of a misdemeanor. This section shall not apply to an authorized official of the [FIA] who in good faith filed a complaint under this act based upon information and belief."

F. Summons

Once the complaint is filed, the court must issue a summons against the defendant. MCL 722.714(6).

MCL 722.714a(1) provides:

> "The summons or other initial notice to a party in an action under this act shall contain notification that the party's obligation to support the child will be determined and that the party's rights to custody of and parenting time with the child may be determined during the paternity action."

*See Section 3.8(H) regarding the assistance of counsel.

The summons issued pursuant to MCL 722.714 must include a form advising the alleged father of the right to assistance of an attorney* and the procedure for requesting the appointment of an attorney. MCR 3.217(D)(1).

The summons, complaint, and the form advising of the right to an attorney shall be served upon the defendant "in the same manner as is provided by court rules for the service of process in civil actions." MCL 722.714(3) and MCR 3.217(D)(1).

MCR 2.105 governs service of process in civil actions and provides, in part:

> "(A) Individuals. Process may be served on a resident or nonresident individual by
>
> > (1) delivering a summons and a copy of the complaint to the defendant personally; or
> >
> > (2) sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2).
>
> "(B) Individuals; Substituted Service. Service of process may be made
>
> > (1) on a nonresident individual, by
> >
> > > (a) serving a summons and a copy of the complaint in Michigan on an agent, employee, representative, sales representative, or servant of the defendant, and
> > >
> > > (b) sending a summons and a copy of the complaint by registered mail addressed to the defendant at his or her last known address;

> (2) on a minor, by serving a summons and a copy of the complaint on a person having care and control of the minor and with whom he or she resides;
>
> (3) on a defendant for whom a guardian or conservator has been appointed and is acting, by serving a summons and a copy of the complaint on the guardian or conservator[.]"

If service of process cannot be reasonably made pursuant to the above quoted portions of MCR 2.105(A) or (B), the court may order service of process to be made in "any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard." MCR 2.105(I)(1). A request for alternate service pursuant to this subrule must be made in the form of a motion that sets forth facts indicating why process cannot otherwise be made. MCR 2.105(I)(2).

After the defendant is served pursuant to MCR 2.105(A)(1), the defendant must file a response to the complaint within 21 days. MCR 2.108(A).

If the defendant is served and does not file and serve a response as required by the court rules, the court may enter a default judgment without taking any testimony. MCL 722.714(6).

G. Special Notice Provisions for Incarcerated Parties

In addition to the foregoing procedures for notification, special procedures must be followed when one of the parties to a paternity action is incarcerated. MCR 2.004 requires specific actions be undertaken in cases involving incarcerated parties. See Section 3.4(B) for discussion of MCR 2.004.

H. Right to Counsel

An indigent defendant in a paternity case has the right to appointed counsel. *Artibee v Cheboygan Circuit Judge*, 397 Mich 54, 56 (1976), *Larrabee v Sachs*, 201 Mich App 107, 109 (1993), and MCR 3.217(D).

A prosecuting attorney is required to initiate paternity proceedings in certain situations. MCL 722.714(4) provides:

> "If the county family independence agency of the county in which the mother or alleged father resides first determines that she or he has physical possession of the child and is eligible for public assistance or without means to employ an attorney; if the family independence agency is the complainant; or if the mother, alleged father, or child is receiving services under part D of title IV of the social security act, 42 U.S.C. 651 to 667, then the prosecuting attorney or an attorney employed by the county under section 1 of

1941 PA 15, MCL 49.71, shall initiate and conduct proceedings under this act. . . . "

If an alleged father appears in court after being served with a complaint and summons, the court must personally advise the respondent that he is entitled to the assistance of counsel and if he cannot afford an attorney, then the court will appoint an attorney. MCR 3.217(D)(2). After being advised of his right to an attorney, if the alleged father wishes to proceed without an attorney, then the record must affirmatively show that he was so advised and that he waived the right to counsel. MCR 3.217(D)(3). If the father fails to appear, then MCR 3.217(D)(2)–(3) do not apply and the court may enter a default judgment. MCR 3.217(D)(4) and MCL 722.714(6).

Note: The prosecuting attorney and court-appointed counsel are not required to represent either party in disputes over custody or parenting time. MCL 722.717b.

I. Genetic Testing

*A scientific discussion of genetic testing is outside of the scope of this benchbook.

Genetic testing has become a common practice in contested paternity cases. Genetic testing consists of blood or tissue typing determinations, which may include but are not limited to, determinations of red cell antigens, red cell isoenzymes, human leukocyte antigens, serum proteins, or DNA identification profiling, to determine whether the alleged father is likely to be, or is not the father of the child. MCL 722.716(1).*

Genetic testing must be conducted by a person accredited for paternity determination by a nationally recognized scientific organization, including, but not limited to, the American Association of Blood Banks. MCL 722.716(2).

1. Requests for Genetic Testing

Genetic testing may be requested by either party or the FIA. The court may also order genetic testing on its own motion. MCL 722.714 and MCL 722.716.

FIA Request. If, after the defendant is served with the summons and complaint, the parties fail to consent to an order of filiation within the time permitted for filing a responsive pleading, the FIA may file and serve both the mother and the alleged father with a notice requiring the parents and the child to appear for genetic paternity testing. MCL 722.714(7). The notice to the parties to appear for genetic testing must include explanations of the following:

- The test to be performed.
- The purpose and potential uses of the test.

- How the test results will be used to establish paternity or nonpaternity as provided in MCL 722.716.
- How the individual will be provided with the test results.
- The individual's right to keep the test results confidential as provided in MCL 722.716a. MCL 722.714a(2).

If either party or the child fail to appear for genetic testing, then the FIA may request a court order to compel genetic testing. MCL 722.714(8).

> **Note**: There is a distinction between the initial request by the FIA for genetic testing and an FIA request for court-ordered testing. According to MCL 722.714(7), the FIA may first make a *request to the parties* for genetic testing. This is simply a request and is not enforced by the court. If the parties fail to comply with the FIA's request, then the FIA may *request the court* order genetic testing. MCL 722.714(8). If the parties fail to comply with the court order, then the court may enter sanctions against the parties. See Section 3.7(I)(2) regarding "Court-Ordered Testing" for more information on sanctions available to the court.

A Party's Request. Either party may request that the court order paternity testing, and upon a request from either party, the court must order the mother, the child and the alleged father to submit to genetic testing. MCL 722.716(1).

A request for genetic testing must be made before the pretrial conference, or if a pretrial conference is not held, within the time specified by the court. MCR 3.217(C). Failure to timely request genetic testing waives the right to such testing, unless the court in the interests of justice permits such testing at a later time. MCR 3.217(C).

A trial court is under no duty to compel genetic testing when it is not requested by the parties. *Kenner v Watha*, 115 Mich App 521, 524 (1982).

The Court's Request. The court may, upon its own motion, order the mother, the child, and the alleged father to submit to genetic testing. MCL 722.716(1).

2. Court-Ordered Testing

If the court orders genetic testing and a party refuses to submit to the testing, the court may:

- Enter a default judgment at the request of the appropriate party.
- If a trial is held, allow disclosure of the fact of the refusal unless good cause is shown for not disclosing the fact of refusal.

- Order any other remedies available to the court. MCL 722.716(1).

> **Note:** These remedies apply *only* to court-ordered testing. If FIA requests the parties submit to testing but does not obtain a court order requiring testing, then these remedies are not available. If FIA requests the parties submit to testing, and they refuse to submit to testing, the FIA may then request a court order to compel genetic testing. MCL 722.714(8).

When a verified complaint is filed in accordance with the Paternity Act, neither a search warrant nor an evidentiary hearing is required prior to the court ordering blood tests. *Bowerman v MacDonald*, 431 Mich 1, 3 (1988).

The SCAO approved form "Order for Blood or Tissue Typing or DNA Profile" is attached in Appendix B.

3. Results of Genetic Testing

Once genetic testing is completed, the testing laboratory completes either a document indicating the blood or tissue typing results or a "DNA identification profile" and a "summary report."

Once genetic testing has been conducted and the report is prepared MCL 722.716(4)–(5) provides for the admission of the results or the procedures for objecting to the admission of the results. MCL 722.716(4)–(6) provide:

> "(4) Subject to subsection (5), the result of blood or tissue typing or a DNA identification profile and the summary report shall be served on the mother and alleged father. The summary report shall be filed with the court. Objection to the DNA identification profile or summary report is waived unless made in writing, setting forth the specific basis for the objection, within 14 calendar days after service on the mother and alleged father. The court shall not schedule a trial on the issue of paternity until after the expiration of the 14-day period. If an objection is not filed, the court shall admit in proceedings under this act the result of the blood or tissue typing or the DNA identification profile and the summary report without requiring foundation testimony or other proof of authenticity or accuracy. If an objection is filed within the 14-day period, on the motion of either party, the court shall hold a hearing to determine the admissibility of the DNA identification profile or summary report. The objecting party has the burden of proving by clear and convincing evidence by a qualified person described in subsection (2) that foundation testimony or other proof of authenticity or accuracy is necessary for admission of the DNA identification profile or summary report.
>
> "(5) If the probability of paternity determined by the qualified person described in subsection (2) conducting the blood or tissue

typing or DNA identification profiling is 99% or higher, and the DNA identification profile and summary report are admissible as provided in subsection (4), paternity is presumed. If the results of the analysis of genetic testing material from 2 or more persons indicate a probability of paternity greater than 99%, the contracting laboratory shall conduct additional genetic paternity testing until all but 1 of the putative fathers is eliminated, unless the dispute involves 2 or more putative fathers who have identical DNA.

"(6) Upon the establishment of the presumption of paternity as provided in subsection (5), either party may move for summary disposition under the court rules.* This section does not abrogate the right of either party to child support from the date of birth of the child if applicable under [MCL 722.717]."

*See MCR 2.116(C)(10). Summary disposition may be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Information obtained through genetic testing is confidential, except as authorized by the Paternity Act, and genetic material obtained through testing must be destroyed. MCL 722.716a.

Test results obtained as a result of court-ordered genetic testing are not protected by physician-patient privilege. *Osborn v Fabatz*, 105 Mich App 450, 455-57 (1981).

Denying an indigent respondent genetic testing based solely on his or her inability to pay for the testing violates due process. *Little v Streater*, 452 US 1, 16-17 (1981).

J. Procedure

The Paternity Act is generally civil in nature; accordingly, it is governed by the rules generally applicable to civil proceedings, except as modified by MCR 3.217 and the Paternity Act. MCR 3.217(A), MCL 722.714(1), *Bowerman v MacDonald*, 431 Mich 1, 8-16 (1988), and *Larrabee v Sachs,* 201 Mich App 107, 108 (1993).

Previously, defendants have contended that the Paternity Act is "quasi-criminal" in nature. Accordingly, defendants have argued that they are entitled to constitutional protections that are afforded to criminal defendants. The Court of Appeals in *Larrabee* provided the following guidance:

"Although historically the Paternity Act, and its predecessor, the Bastardy Act, contained numerous aspects of criminal procedure, those provisions have been gradually eliminated. The one remaining criminal procedural right afforded by the act, that of appointed counsel for an indigent defendant, is a recognition of the fundamental unfairness of providing counsel for an indigent plaintiff while denying the same to an indigent defendant. MCL 722.714(9); MSA 25.494(9); *Artibee v Cheboygan Circuit Judge*,

> 397 Mich 54; 243 NW2d 248 (1976). However, as stated in *Bowerman,* [431 Mich 1, 13 (1988)], '[i]t would be erroneous to conclude that the application of this particular and clearly demarcated right was intended to suggest that the full panoply of criminal procedural rights were to be afforded.' With the virtual elimination of all remaining vestiges of criminal procedure, paternity actions are now considered to be fundamentally civil in nature. Accordingly, procedure in paternity cases is controlled by MCR 3.212." 201 Mich App at 109.*

*MCR 3.212 is not the only applicable rule. MCR 3.201 et seq. apply to paternity proceedings.

Trial by Jury. There is no right to a trial by jury in a paternity action. Instead, a party is required to demand a jury if that party wants one. *Bowerman v MacDonald*, 431 Mich 1, 8 (1988). Effective June 5, 1998, 113 PA 1998, "Either party may demand a trial by jury" was deleted from MCL 722.715(1). However, MCR 3.217(B) provides that the mother or the alleged father may demand a trial by jury and MCR 2.508 governs the demand for and waiver of trial by jury.

MCR 2.508(B)(1) provides:

> "A party may demand a trial by jury of an issue as to which there is a right to trial by jury by filing a written demand for a jury trial within 28 days after the filing of the answer or a timely reply. A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading. The jury fee provided by law must be paid at the time the demand is filed."

The right to a jury trial may be waived. MCR 2.508(D) provides:

> "(1) A party who fails to file a demand or pay the jury fee as required by this rule waives trial by jury.
>
> "(2) Waiver of trial by jury is not revoked by an amendment of a pleading asserting only a claim or defense arising out of the conduct, transaction, or occurrence stated, or attempted to be stated, in the original pleading.
>
> "(3) A demand for trial by jury may not be withdrawn without the consent, expressed in writing or on the record, of the parties or their attorneys."

The jury waiver requirements applicable to criminal trials are not applicable to paternity actions simply because the plaintiff is represented by the prosecutor. *Covington v Cox*, 82 Mich App 644, 647-49 (1978).

Burden of Proof. The plaintiff in a paternity proceeding has the burden to prove paternity by a preponderance of the evidence. *Huggins v Rahfeldt*, 83 Mich App 740, 743 (1978), and *Smith v Robbins*, 91 Mich App 284, 292 (1979). See also *Rivera v Minnich*, 483 US 574, 576-77 (1987), where the

United States Supreme Court held the "preponderance of evidence" standard for paternity cases was constitutional.

Evidence. At trial, both the mother and the father are competent to testify. If either chooses to testify, then he or she is subject to cross-examination. MCL 722.715(1) provides:

> "(1) Both the mother and the alleged father of the child shall be competent to testify, and if either gives evidence he or she shall be subject to cross-examination. The court may exclude the general public from the room where proceedings are held, pursuant to this act, admitting only persons directly interested in the case, including the officers of the court, officers or public welfare agents presenting the case, and witnesses."

In *Larrabee v Sachs*, 201 Mich App 107, 110 (1993), a paternity case, the Court held:

> "The protection against compulsory self-incrimination provided by the Fifth and Fourteenth Amendments of the United States Constitution and Const 1963, art 1, § 17 does not entitle defendant to refuse to give any testimony in a civil action. The privilege against self-incrimination may be invoked only when the testimony sought to be elicited will in fact tend to incriminate the witness."

MCL 722.716 provides that some evidence introduced at trial does not require foundation testimony prior to its admission. As long as the genetic testing was conducted by an accredited expert and no objection was filed within 14 days of the report being served upon the parties, no foundation testimony is required prior to its admission into evidence. MCL 722.716(4).*

*See Section 3.8(I).

Lay Opinions on Resemblance to the Alleged Father. A trial court may permit the admission of lay opinion testimony identifying resemblances between the child and the putative father as long as it is limited to individual features and specific traits. *Schigur v Keck*, 93 Mich App 763, 768-69 (1979), and *Burnside v Green,* 171 Mich App 421, 423-24 (1988).

K. Order of Filiation

Under certain circumstances the court is required to issue an order of filiation. Those circumstances are listed in MCL 722.717(1), which provides:

> "The court shall enter an order of filiation declaring paternity and providing for the support of the child under 1 or more of the following circumstances:
>
> > (a) The finding of the court or the verdict determines that the man is the father.

> (b) The defendant acknowledges paternity either orally to the court or by filing with the court a written acknowledgment of paternity.
>
> (c) The defendant is served with summons and a default judgment is entered against him or her."

The order of filiation must include the following:

- the amount of child support to be paid,
- payment of confinement and other costs associated with the pregnancy, and
- funeral expenses if the child has died. MCL 722.717(2).

An "Order of Filiation and Support" is included in Appendix B.

Upon entry of an order of filiation, the clerk of the court must collect a fee of $35.00 from the defendant. The clerk must forward $26.00 of the fee along with a written report of the order of filiation to the director of the Department of Public Health. The remaining $9.00 must be retained by the clerk. MCL 722.717(4).

Once the court signs an order of filiation, the parties must be served with a copy of the order and a proof of service must be filed with the court. MCL 722.717(6) provides:

> "Within the time prescribed by court rule, the party, attorney, or agency that secures the signing of an order of filiation shall serve a copy of the order on all parties to the action and file proof of service with the court clerk."

Once an order of filiation and support has been entered, the court has continuing jurisdiction over proceedings brought under the Paternity Act to increase or decrease the amount of support, and to enforce, provide for or change the provisions relating to custody, support, or parenting time with the child. MCL 722.720.

3.9 Adjudication of Paternity in Another State

MCL 722.714b provides:

> "The establishment of paternity under the law of another state has the same effect and may be used for the same purposes as an acknowledgment of paternity or order of filiation under this act."

3.10 Putative Father Hearing — Child Protective Proceedings

If at any time during a child protective proceeding the court determines that the child has no father as defined by MCR 3.903(A)(7), then the court may take further action as provided in MCR 3.921(C).

MCR 3.903(A)(7) defines a "father" as any of the following:

> "(a) A man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage;
>
> "(b) A man who legally adopts the minor;
>
> "(c) A man who by order of filiation or by judgment of paternity is judicially determined to be the father of the minor;
>
> "(d) A man judicially determined to have parental rights; or
>
> "(e) A man whose paternity is established by the completion and filing of an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act, MCL 722.1001 et seq., or a previously applicable procedure. For an acknowledgment under the Acknowledgment of Parentage Act, the man and mother must each sign the acknowledgment of parentage before a notary public appointed in this state. The acknowledgment shall be filed at either the time of birth or another time during the child's lifetime with the state registrar."

Although similar to the Adoption Code and Paternity Act, MCR 3.903 expands the definition of a child "born out of wedlock."* The following language is only found in MCR 3.903(A)(7): "unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage."

*See Section 3.3 for the definition of child "born out of wedlock" in the Paternity Act and the Adoption Code.

In *In re CAW*, 253 Mich App 629 (2002), the Court of Appeals addressed the additional language contained in MCR 5.903.* *CAW* involved a married couple, Deborah Weber (Weber) and Robert Rivard (Rivard) and their children. One of the children, CAW, was conceived and born during the marriage, but the identity of CAW's natural father was unknown. Both Weber and Rivard testified that CAW may not be the biological child of Rivard and that a man outside of the marriage, the appellant, may be CAW's father. After the parental rights of both Weber and Rivard were terminated to all of their children, the appellant filed a motion to intervene based upon his belief that he was CAW's biological father. The trial court denied the motion indicating that the appellant had no standing to intervene.

* Now MCR 3.903(A)(7)(a).

The Court of Appeals held that although the appellant would not have standing to establish paternity under the Paternity Act, MCL 722.714 et seq., he did have standing to pursue it during the pendency of a child protective proceeding. The Court stated:

> "The definition of 'child born out of wedlock' in MCR 5.903(A)(1) is less restrictive than that under the Paternity Act or the Probate Code. Our courts have established that under the Paternity Act, there must have been a prior determination that a child was not the issue of a marriage for a putative father to have standing to establish paternity. *Girard* [*v Wagenmaker*, 437 Mich 231, 242-43 (1991)]. However, MCR 5.903(A)(1) uses the language, 'a child determined by judicial notice or otherwise.' Although subtle, there is a difference. MCR 5.921 allows the court to determine the identity of a putative father during the pendency of a protective proceeding if the court *at any time during the pendency* of the proceeding determines that the child has no father as defined by the court rules. Reading MCR 5.921 in conjunction with MCR 5.903 under the authority of *Montgomery,* we find that during child protective proceedings, the court can determine the child to be born out of wedlock and then take appropriate steps to determine the identity and rights of the biological father." (Emphasis in original.) 253 Mich App at 637-38.

The Court of Appeals reversed the trial court and held that the appellant has standing to intervene in this case and should be given an opportunity to establish his paternity. 253 Mich App at 644. The Court cautioned that this finding did not entitle the appellant to custody of the child, but if he establishes that he is the biological father, then his fitness should be tested. 253 Mich App at 640-41.

On December 26, 2002, the Michigan Supreme Court granted leave to appeal the Court of Appeals decision in *In re CAW*, 253 Mich App 629 (2002), and limited the appeal to the issue of whether a putative biological father has standing to intervene in a Juvenile Code child protective proceeding where the child already has a legal father. *In re CAW,* 467 Mich 921 (2002).

In *In re Montgomery*, 185 Mich App 341 (1990), child protective proceedings were initiated and it was alleged that Luther Myles (Myles) was the child's legal father. Myles was married to the child's mother at the time of the child's conception and birth. Another man, Michael Quinn (Quinn), was alleged to be the child's biological father. At the adjudication hearing, Myles testified that he was not the child's biological father because he had been incarcerated at the time of the child's conception. The child's mother acknowledged that Myles was not the father and testified that Quinn was the child's biological father. The court found Quinn to be the child's biological father and subsequently found that Myles did not have standing as a party and could therefore not object to termination proceedings. 185 Mich App at 342–43.

Myles appealed the determination that he had no standing. The Court of Appeals affirmed the lower court's determination that Myles had no standing.

The Court indicated that MCR 5.903(A)(4)(a)* provides that a father is "a man married to the mother at any time from a minor's conception to the minor's birth unless the minor is determined to be a child born out of wedlock." The lower court determined that pursuant to MCR 5.903(A)(1) the child was a "child born out of wedlock" because the child was not an "issue of the marriage." The Court of Appeals concluded that the lower court had correctly determined that the child was a "child born out of wedlock" and Myles was not the father of the child; therefore, he lacked standing to intervene. 185 Mich App at 343.

*Now MCR 3.903(A)(7)(a).

A. Notice

The court may take initial testimony on the identity and address of the natural father. If the court finds probable cause to believe that an identifiable person is the natural father of the child, the court must direct that notice be served upon that person in any manner reasonably calculated to provide notice to the putative father. MCR 3.921(C)(1).

If the putative father's whereabouts is unknown after diligent inquiry, the court may direct that notice be given by publication. The court may also direct notice by publication if the court determines that the identity of the putative father is unknown. MCR 3.921(C)(1). Any notice by publication must not include the name of the putative father. MCR 3.921(C)(1).

MCR 3.921(C)(1)(a)–(d) provides that the notice must include the following:

> "(a) if known, the name of the child, the name of the child's mother, and the date and place of birth of the child;
>
> "(b) that a petition has been filed with the court;
>
> "(c) the time and place of hearing at which the natural father is to appear to express his interest, if any, in the minor; and
>
> "(d) a statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, a waiver of a right to appointment of an attorney, and could result in termination of any parental rights."

The SCAO form "Notice to Putative Father" is attached in Appendix B.

B. Special Notice Provisions for Incarcerated Parties

In addition to the foregoing procedures for notification, special procedures must be followed when one of the parties to a child protective proceeding is incarcerated. MCR 2.004 requires specific actions be undertaken in cases

involving incarcerated parties. See Section 3.4(B) for discussion of MCR 2.004.

C. Hearing

MCR 3.921(C)(2) provides that once the putative father has been provided notice, the court may conduct a hearing and determine, as appropriate, that:

> "(a) the putative father has been served in a manner that the court finds to be reasonably calculated to provide notice to the putative father.
>
> "(b) a preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed 14 days to establish his relationship according to MCR 3.903(A)(7). The court may extend the time for good cause shown.
>
> "(c) there is probable cause to believe that another identifiable person is the natural father of the minor. If so, the court shall proceed with respect to the other person in accord with subrule (C).
>
> "(d) after diligent inquiry, the identity of the natural father cannot be determined. If so, the court may proceed without further notice and without appointing an attorney for the unidentified person."

The court may also find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights* and the right to legal counsel, if the father fails to appear after proper notice or if the father appears but fails to establish paternity within the time set by the court. MCR 3.921(C)(3).

*See Sections 2.11–2.14 for more information regarding the termination of a father's parental rights. See also Section 3.2 for information on the due process rights of fathers.

3.11 The Uniform Interstate Family Support Act (UIFSA)

The primary purpose of the Uniform Interstate Family Support Act (UIFSA), MCL 552.1101 et seq., is to provide a means for establishing and collecting child support across state lines. UIFSA also provides a means for establishing paternity. MCL 552.1701(1).

UIFSA cases may be initiated in Michigan and transferred to another state for the establishment of paternity and support in that state, or they may be initiated in another state and transferred to Michigan for the establishment of paternity and support. MCL 552.1701(2) and MCL 552.1301.

If a case is transferred to Michigan for the establishment of paternity, then the Paternity Act, MCL 722.711 et seq. governs the proceedings. MCL 552.1701(2).*

*See Section 3.8 for more information regarding the Paternity Act.

A detailed discussion of the procedures and statutes governing UIFSA cases is outside the scope of this benchbook.